

REMARKS

Claims 1 through 31 were presented upon filing of this application. In a previously filed Response to Restriction Requirement, Applicant elected to proceed with examination of claims 8-12 and 25-27. By this amendment, claims 8, 10, 12 and 25 have been amended, and claims 9 and 26 have been canceled.

In the Office Action, the Examiner rejected claims 8-12 and 25-27 under 35 U.S.C. § 102(b) as being anticipated by Edwards et al. (USP 6,258,087). In response, and without acceding to the Examiner's stated grounds for rejecting the foregoing claims, Applicant has amended independent claims 8 and 25 to recite an apparatus that comprises "a suction port configured to approximate an interior of the gastrointestinal lumen and the endoluminal support" (claim 8), and a method that comprises "applying suction to approximate the interior of the stomach and the endoluminal support" (claim 25). Applicant respectfully submits that these amendments are sufficient to overcome the rejection, and that the claims should now be allowed.

The Examiner had rejected claim 12 based upon a contention that the Edwards et al. patent describes an "aspirating apparatus – 46", and that this structure corresponds to the claimed "suction port" recited in claim 12. However, the description in the Edwards et al. patent of the aspirating apparatus 46 is only to the effect that the structure is adapted "to convey aspirated material from or near from the operative element 36 for discharge." (Edwards et al., col. 10, ll. 57-59). Nowhere is the aspirating apparatus described as being configured to approximate an interior of the gastrointestinal lumen and the endoluminal support, nor is this function described. In fact, such a configuration and/or function would defeat the ability of the aspirating apparatus 46 to perform the function described in the Edwards et al. patent of conveying aspirated material for discharge.

Accordingly, because at least these elements recited in claims 8 and 25 are not disclosed, taught, or suggested by the Edwards et al. patent, the claims contain patentable subject matter over that patent. The rejection should therefore be withdrawn, and the claims allowed to issue.

Amendment and/or cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented,

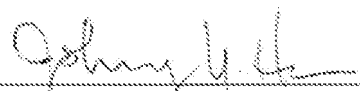
but rather as an attempt to expedite allowance and issuance of the currently pending claims. No new matter has been added.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the appropriate fee and/or petition is not filed herewith and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to **Deposit Account No. 50-3973** referencing Attorney Docket No. **USGINZ00600**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,



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